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WILKE, FLEURY, HOFFELT, GOULD & BIRNEY, LLP
DANIEL L. EGAN (SBN 142631)
MEGAN A. LEWIS (SBN 221263)
STEVEN J. WILLIAMSON (SBN 238869)
400 Capitol Mall
Twenty-Second Floor
Sacramento, CA 95814
Telephone: (916) 441-2430
Facsimile: (916) 442-6664

Attorneys for Creditor
TRAYNOR MARINA INVESTMENTS, LLC

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT A. COOK,
Debtor.

Case No.: 11-39335-C-11

WFH-2

Date: September 21, 2011
Time: 10:00 a.m.
Dept: C

APPLICATION FOR RULE 2004 EXAMINATION OF BANK OF AMERICA

Traynor Marina Investments, LLC, Creditor, in this case ("Traynor") submits this application for an order authorizing an examination of BANK OF AMERICA ("Bank") pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure.

I.
FACTS

Traynor is a judgment lien creditor of Debtor asserting a claim in the approximate amount of \$1.1 million. Traynor has been in the process of attempting to collect its judgment for almost one year. Traynor had obtained appointment of a receiver over Debtor's assets, and had obtained charging orders against Debtor's partnerships and limited liability companies. Traynor had also filed a motion with the Sacramento Superior Court seeking an order authorizing the foreclosure of Traynor's judgment lien on certain of Debtor's partnership and limited liability company

1 interests. Debtor commenced this Chapter 11 case immediately before the motion to forestall
2 Traynor's foreclosure efforts.

3
4 **II.**
DISCUSSION

5 Traynor seeks an order authorizing Traynor to subpoena documents from Bank to aid
6 Traynor's investigation of Debtor's assets and to aid in locating any potential missing funds.
7 Rule 2004 of the Federal Rules of Bankruptcy Procedure provides as follows:

8 Rule 2004. Examination

9 (a) Examination on motion. On motion of any party in interest, the
court may order the examination of any entity.

10 (b) Scope of examination. The examination of an entity under this
11 rule or of the debtor under § 343 of the Code may relate only to the
12 acts, conduct, or property or to the liabilities and financial condition
of the debtor, or to any matter which may affect the administration
13 of the debtor's estate, or to the debtor's right to a discharge. In a
family farmer's debt adjustment case under chapter 12, an
14 individual's debt adjustment case under chapter 13, or a
reorganization case under chapter 11 of the Code, other than for the
15 reorganization of a railroad, the examination may also relate to the
operation of any business and the desirability of its continuance, the
16 source of any money or property acquired or to be acquired by the
debtor for purposes of consummating a plan and the consideration
17 given or offered therefor, and any other matter relevant to the case
or to the formulation of a plan.

18 (c) Compelling attendance and production of documents. The
attendance of an entity for examination and for the production of
19 documents, whether the examination is to be conducted within or
without the district in which the case is pending, may be compelled
20 as provided in Rule 9016 for the attendance of a witness at a
hearing or trial. As an officer of the court, an attorney may issue
21 and sign a subpoena on behalf of the court for the district in which
the examination is to be held if the attorney is admitted to practice
22 in that court or in the court in which the case is pending.

23
24 (d) Time and place of examination of debtor. The court may for
cause shown and on terms as it may impose order the debtor to be
25 examined under this rule at any time or place it designates, whether
within or without the district wherein the case is pending.

26 (e) Mileage. An entity other than a debtor shall not be required to
27 attend as a witness unless lawful mileage and witness fee for one
day's attendance shall be first tendered. If the debtor resides more
28 than 100 miles from the place of examination when required to
appear for an examination under this rule, the mileage allowed by

1 law to a witness shall be tendered for any distance more than 100
2 miles from the debtor's residence at the date of the filing of the first
3 petition commencing a case under the Code or the residence at the
time the debtor is required to appear for the examination, whichever
is the lesser.

4 USCS Bankruptcy R 2004

5 Traynor requests an order authorizing Traynor to subpoena records from Bank of America
6 pursuant to Rule 2004.

7 **III.**
8 **PRAYER FOR RELIEF**

9 Wherefore, Traynor requests an order authorizing Traynor to subpoena all records from
10 Bank of America.

11 DATED: September 7, 2011

12 WILKE, FLEURY, HOFFELT,
13 GOULD & BIRNEY, LLP

14 By: 

15 DANIEL L. EGAN
16 Attorneys for Creditor
17 TRAYNOR MARINA INVESTMENTS,
18 LLC
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